



SHERWOOD CHARTER REVIEW COMMITTEE
22560 SW Pine St., Sherwood, Oregon
May 22, 2014

1. **Call to Order:** Chair Pat Allen called the meeting to order at 6:32 pm.
2. **Committee Members Present:** Chair Pat Allen, Budget Committee Representative Vice Chair Neil Shannon, Library Advisory Board Representative Jack Hoffbuhr, Cultural Arts Commission Representative Alyse Vordermark, Parks Advisory Board Representative Brian Stecher and Citizen at Large Bob Silverforb, Planning Commission Representative Beth Cooke and Citizen at Large Jennifer Kuiper. SURPAC Representative Charlie Harbick was absent.
3. **Staff and Council Liaison Present:** City Manager Joseph Gall and City Recorder Sylvia Murphy. City Council Liaison Linda Henderson arrived at 6:50 pm.

Chair Allen addressed the draft May 1, 2014 meeting minutes (see record, Exhibit A) and asked for amendments or a motion to approve. Mr. Silverforb indicated there were a few typo's but did not specify. The City Recorder indicated she would review and make corrections.

4. **Approval of May 1, 2014 Meeting Minutes**

MOTION: From Bob Silverforb to adopt the May 1, 2014 meeting minutes with requested corrections, seconded by Brian Stecher. Motion passed 8:0, all present members voted in favor. (Charlie Harbick was absent).

5. **Public Comments**

No one came forward. The committee discussed the May election results and unofficial passage of all 5 proposed ballot measures amending the Charter. Comments were received regarding the value and importance of clarity in the amendments proposed by the committee.

Chair Allen addressed the agenda and recapped the items for discussion and referred to a track change document provided by the City Recorder, (see record, Exhibit B).

6. **Charter Review Committee Discussion**

- A. **Chapter VIII-Appointive Officers, Section 35-City Attorney.** The Committee discussed the language of the City attorney and the assumption that the office of the City attorney is staffed and the attorney's office hires staff within their own office. The committee discussed the language of being the "chief legal officer" and replacing "officer" with "authority" or "counsel." They agreed to replace "*officer*" with "*counsel*." The committee discussed the language of, "the city attorney *may be* a direct employee" and agreed to change "*may be*" to "*shall be either*." They discussed the remainder of the language and

agreed to amend the sentence to read; *"The office of the city attorney is established as the chief legal counsel of the city government. The city attorney shall be either a direct employee of the council or a firm under contract adopted by the council."*

The committee discussed the following sentence and agreed to amend to read; *"A majority of the council must appoint and may remove the attorney or contracted firm."* They agreed to amend the last sentence to read; *"If the City attorney is a direct employee, the attorney must appoint and supervise and may remove any City attorney office employees."* Discussion followed regarding the employees of the City attorney's office and various scenarios of employment and if the City attorney or a firm has an arm's length relationship with the council and whether or not this is supported. City Manager Gall offered to research and bring back information.

The committee discussed a Hearings Officer and the appointment being made by the council, per the current municipal code. City Manager Gall stated Hearings Officer language generally is not in the charter and is referenced in the code, discussion followed and Mr. Gall offered to research language in other jurisdictions.

Chair Allen addressed Section 37-Compensation. The committee discussed the language and it being more appropriate for Chapter III-Council and the notion that council should not be compensated without a positive vote of the citizens and compensation would not include reimbursement for actual expenses. The committee discussed a new section for Chapter III with language of, *"the mayor and councilors may be reimbursed for actual expenses, no compensation above actual expenses shall be authorized without a prior vote of the citizens."* The committee discussed simple language of "none shall be authorized", and it taking a vote to amend the charter to authorize compensation.

The City Recorder asked if the proposed language would create a new Section 15 or would it be added to Section 7. Comments were received that if added to Section 7-Council the charter would not have to be renumbered. Chair Allen stated the language could read, *"The council consists of a mayor and six councilors nominated and elected from the city. Councilors are not entitled to compensation but may be reimbursed for actual expenses."*

Discussion followed regarding the definition of an "actual expense" and this possibly being established by Council Rules.

Council Liaison Henderson commented regarding her cell phone plan and cost and said she doesn't receive a City reimbursement, although the Mayor does, she said this is not written anywhere. Discussion followed regarding trying to identify expenses and this being a political issue. Language was suggested such as "expenses incurred while representing the council" or "expenses, as established by Council Rules." Discussion followed regarding the council not establishing what the reimbursement is, but establishing rules of what is considered an "actual expenses". The City Recorder offered examples of various types of expenses: mileage, meals, cell phone, training, lodging and parking. She said not all elected officials take the opportunity to submit for reimbursement of these expenses and said it makes it difficult to budget.

Chair Allen said he gets nervous when we talk about moving existing language elsewhere or taking existing language and adding language to it as it gets people wound up about something that is already there and has been working and isn't a problem. He suggested leaving the language in chapter 9 and adding to it to read; *"the mayor and councilors shall not be compensated but may be reimbursed for*

actual expenses”. Discussion followed and it was asked if there is a standard understanding of what “actual expenses” are.

The City Recorder informed the committee that staff has discussed through the budget process budgeting a set amount for the expenses of elected officials and any amount exceeding this set figure would be out of pocket for the elected, she stated this conversation has been at the staff level and not at the council level. Discussion followed with examples of ways councilors can be reimbursed.

Chair Allen restated the proposed amendment as, *“the mayor and councilors shall not be compensated but may be reimbursed for actual and reasonable expenses.”* He suggested the language remain in Section 37. Discussion followed. Council Liaison Henderson informed the group that state law prohibits elected officials from voting in compensation for themselves while in office. Discussion followed regarding compensation examples from other cities and City Manager Gall provided an example from the City of West Linn where amounts are specified in the charter. Discussion continued regarding the public fear of elected officials voting themselves compensation and comments were received that the current mayor or councilors would probably not vote themselves compensation, but there is no language to prevent it. Discussion followed and Chair Allen said he would like to protect a future council from making the mistake of thinking it would be a good idea to adopt compensation solely on their own authority. He said he would like to protect the community from the potential malpractice and said the best way to do that is to put language in the charter that it requires a vote. Discussion followed and examples were provided on what the intent of the language could be, to prohibit compensation or specify an amount.

Discussion continued regarding compensation and there being a difference between being paid for your time and being paid for the expenses incurred while providing your time.

Chair Allen restated the proposed amendment as; *“the mayor and councilors shall not be compensated but may be reimbursed for actual and reasonable expenses.”* He asked if the language should remain in Chapter 9 or moved to Chapter 3 and explained he would argue to leave the language in Chapter 9 because the only charter change is actually strengthening the prohibition, and if you move it to Chapter 3 it appears we are authorizing things that are already in the charter.

The committee agreed with the suggestion to amend Chapter 9. Discussion followed regarding the potential language of the ballot title and Chair Allen replied it could be, *“Prohibits Council Compensation, Restricts Expenses”*.

Mr. Silverforb asked regarding the current process when elected officials submit an expense. The City Recorder explained the expense comes to her and the City Manager approves all entries into the City’s financial system. She stated the expenses are already spent and the City Manager is approving something after the fact. The City Manager explained the use of City purchase cards and his approval after the expenditure has been made.

Ms. Kuiper stated it’s not a reimbursable. The City Recorder explained that the process is an unwritten process and provided an example and said the current Mayor is issued a City purchase card and other councilors are not. She stated this is based on past practices of the former Mayor and said the former Mayor also received an \$80 monthly cell phone reimbursement and the current Mayor chooses not to. She explained another example of an expense is for mileage when an elected official attends a county meeting, they are reimbursed. She provided another example of an elected official asking her to

register them for a conference in which she would use her City purchase card for the registration fee, she said these expenditures are approved by the City Manager after the fact.

Mr. Silverforb asked if the City Manager ever sees an expense that is above what is reasonably expected. City Manager Gall shared a recent example of an expenditure he did not approve, not due to the amount, but due to his thoughts that it did not meet the intent of the purpose and it wasn't consistent with past practice. He said it was to attend a fundraiser of an organization outside the City that the City is not a member of. He explained he has spoken with other cities on their practices and the guidelines are in their rules not in their charters. Discussion followed.

Mr. Stecher said he would like to see more in the Council Rules to take pressure off the City Manager. Discussion followed and Council Liaison Henderson spoke of a conversation she had with the City Recorder regarding allowing a set amount for each elected official for various expenses and gave examples of current practices regarding attending events. City Manager Gall provided an example from the City of Tigard where the elected officials see each other's expenses and police themselves.

Mr. Stecher reiterated the Council Rules would be a good place for this and said he is against the charter indicating an amount similar to the West Linn example.

Chair Allen suggested when the committee is done with their work on the charter, maybe the committee could look at the Council Rules and offer advisory recommendations to the council for their January review. The committee agreed.

Chair Allen addressed Section 38-Merit System and Council Liaison Henderson stated the council doesn't do any of this.

Mr. Stecher stated he believes the language should read "City personnel" as he believes this is who is being addressed and said this is what the City Manager was hired to do and asked why is the council being asked to address it. Comments were received that this is language from the model charter.

Ms. Vordermark asked if there is a council resolution stating the City Manager is responsible for this? Discussion followed and it was asked if the City Manager's contract is adopted by resolution, Ms. Henderson replied yes. It was asked if the contract provides that he will do these things, Ms. Henderson replied it's part of his day to day management.

The City Recorder reminded the committee they discussed this language previously, and the adoption of the employee manual. Mr. Hoffbuhr asked if the employee manual is adopted by the council, the City Recorder replied not recently within the last 8 years or so.

Chair Allen asked if there is a problem that needs to be fixed. Mr. Stecher replied he believes the language should be deleted and believes the council should not get the idea that they can select an employee and rate their fitness. Discussion followed.

Chair Allen referred to the language of "rules governing" and said he thinks this is what establishes the system, which the City Manager then executes. He said this is the system and not the individual decisions under the system. He said if he had to make the argument if the council has done this, they have by delegating the authority via the contract of the City Manager.

Discussion followed and Mr. Shannon said he is not sure there is a problem and suspects if the committee attempts to delete the language, an argument on a ballot would be difficult. Comments were received to not amend the section.

Mr. Stecher said he was previously thinking the language allowed the council to reach individuals and said they have a right to weigh in on the City Manager's contract and the employee manual.

Ms. Kuiper commented that if Mr. Stecher read the language as he previously had, who's to say that someone else won't read it that way as well. Discussion followed.

Mr. Stecher said he would be happier with language of "the council shall approve the employee manual." City Manager Gall agreed that the employee manual should come before the council.

Mr. Hoffbuhr stated if you wanted to reference it, language could be added at the end of the section to read, "per the City's employee manual".

Mr. Silverforb and Mr. Shannon suggested not amending the language. The committee agreed.

Council Liaison Henderson suggested when the committee reviews the Council Rules, they could suggest the council follow what is listed in the charter by having some rule that reminds the council to review these policies and procedures as related to the City Manager's daily operations of the City.

Chair Allen addressed Section 43-Willamette River Drinking Water and said this was a charter amendment that was passed in 2001 before we connected to the Willamette River System. He said we had a vote and it passed and asked now that we are drinking Willamette River drinking water do we need this provision. City Manager Gall shared language from the City of Wilsonville charter and asked if language could be added to indicate the City voted to approve the use. Discussion followed and reference was made to state statutes where informational notes are added without amending the statutes. The Committee discussed having the City Recorder add similar notes to the charter.

Mr. Shannon asked, as a clean-up, do we want to suggest deleting the paragraph. Comments were received to not delete the language. Discussion followed and the committee proposed to have the City Recorder add information notes to the display of the charter, and not amend the charter, similar to the language currently in parenthesis; (Approved by voters November 2001). The committee agreed to not amend this section of the charter.

Chair Allen addressed Section 42-Solid Waste Incinerators and general discussion occurred regarding the history and age of the language. City Manager Gall stated the language is old and ORS's have possibly changed and if the committee proposes to eliminate the language and the voters say no, the language remains in the charter. Chair Allen asked what the statute is for solid waste incinerators. Discussion occurred regarding current statutes and the current charter language being from 1990. Comments were received that, whether or not the voters approve an amendment to the charter, nothing changes. City Manager Gall replied the description could state the committee is proposing to remove the language because it is outdated or statutes have changed. Discussion followed.

Chair Allen stated the language is an awful charter provision and said it's a perfectly fine thing to want to prohibit.

Mr. Silverforb commented regarding providing an explanation indicating why the committee wants to remove it and letting the people know why, whether it's outdated, etc. He asked why we would want to keep something in the charter that has no relevance and is outdated.

Chair Allen suggested if the committee wanted to attempt the removal of the language to first find out what the state law is. He said if the committee could make an argument that state law prohibits it, then he could make that argument. Committee members agreed and general discussion followed. City Manager Gall offered to research and Chair Allen stated the committee would come back to this section.

Chair Allen addressed item F on the agenda, things not in the charter but flow from it.

City Manager Gall stated the committee previously asked regarding ordinances and said we currently have a process where ordinances can be approved by the council in one night. He provided examples from the City of Lake Oswego (see record, Exhibit C) where adoption could occur in one night, unless there were substantial amendments. He explained the language from West Linn (see record, Exhibit D) where adoption must occur in two meetings, requiring a first and second reading. He stated West Linn also had language indicating adoption could be done in one night. He said he believes the intent is to provide more public process and more public involvement, where laws are not adopted in one night without the opportunity to amend them or get public comments. Discussion followed and Chair Allen stated the committee would review the examples and continue discussion at their next meeting.

City Manager Gall stated he previously provided the committee information on the Multnomah County Charter and referred to language of how a charter is amended and language pertaining to the creation of a charter review committee every six years. He suggested the committee look at the examples he provided. He commented regarding the formation of a committee every 6-8 years to review the charter. Discussion followed.

Mr. Shannon provided topics of discussion noting he wasn't indicating support or lack of support for the topics. He said he spoke with community members after the budget committee meetings and the thought of whether or not a financial officer, Budget Director or CFO, should be employed by the council rather than the City Manager.

Chair Allen asked what was the argument for that. Mr. Shannon replied it's similar to the City attorney where they are highly required and responsible for the operations of the budget over the entire year and whether or not they should be reporting directly to the council with greater control over the budget. Discussion followed with examples of project management and multiple people touching a project budget, corporations having CFO's and who the CFO reports to, auditors and who they report to.

Mr. Shannon stated the other topic was regarding establishing an ombudsman and whether or not the committee wanted to look at opportunities for the public to appeal, discuss or establish another line of communication to the City administration besides going to the City Council.

Chair Allen said one manner to do that would be to identify the City Clerk as the ombudsman. Mr. Shannon stated another thought was the Hearings Officer or the Judge, who are further removed from administration. Discussion followed regarding the Hearings Officer and or Judge who are always attorneys who provide legal advice, are at arm's length from the City Manager and are not employees of the City Manager and are employees of the Council. City Manager Gall asked regarding the purpose

of the ombudsman and possibly hearing concerns regarding staff and said in this case the Supervisor should be addressed, and if concerns were over the City Manager then the Council should be addressed. Discussion followed with various examples of where ombudsmen are utilized and the function they perform and whether or not it's a charter issue. Chair Allen referred to the charter and the language of the City Recorder and adding language that "the City Clerk shall function as the City ombudsman." Discussion followed and other examples of the ombudsman role were provided. The committee asked why the need for the position and if the position would be a paid or volunteer position.

Comments were received that many people play an ombudsman role, and the committee did not show support for the role in a City of our size. Discussion followed regarding some cities providing mediation services and City Manager Gall stated Beaverton provides this service and explained.

Chair Allen mentioned another topic of discussion was run-offs and said now that the changes have been made to the Council positions, he did not believe a run-off situation makes sense. He referred to Mayoral elections and explained current situations and run-off situations. City Manager Gall provided the example of the City of Beaverton holding a primary election and explained. Discussion followed.

Chair Allen asked for other topics, none were mentioned. The City Recorder asked for a recap of the topics for the next meeting.

Ms. Murphy indicated she had listed:

- Section 35-City Attorney and use of the language of "counsel", instead of "authority" and other amended language
- Section 37-Compensation, adding amended language
- Section 38-Merit System, no changes
- Section 43-Willamette River Drinking Water, no changes to charter language, but adding notes and reference to vote date
- Section 42-Solid Waste Incinerators, staff to research current status of state laws
- Discussion of adoption of ordinances, amendment process and periodic review of Charter

Ms. Murphy indicated as the committee gets closer to concluding their work, they will need to look at Section 1-Title and Section 47-Time of Effect. She confirmed the committee wanted similar color coded discussion notes.

7. Adjourn:

Chair Allen adjourned the meeting at 7:50 pm.

Sylvia Murphy, MMC, City Recorder

Patrick Allen, Chair